

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4048-01
Bill No.: HB 1753
Subject: Boards, Commissions, Committees and Councils; Business and Commerce, State
Departments.
Type: Original
Date: February 25, 2002

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Various State Funds	(\$143,722 to Unknown)	(\$150,687 to Unknown)	(\$131,599 to Unknown)
Total Estimated Net Effect on <u>All</u> State Funds	(\$143,722 to Unknown)	(\$150,687 to Unknown)	(\$131,599 to Unknown)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 8 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Economic Development (DED)** state this legislation creates a small business regulatory fairness board and defines small business as a for-profit entity consisting of few than 100 full or part-time employees. DED's Business Development Group would provide staffing to support the activities of the Small Business Regulatory Fairness Board (SBRFB). DED assumes the SBRFB would be assigned to DED. DED would have to provide meeting space for the 9 SBRFB members plus expenses. Four meetings are projected even though 2 are required per year. Cost include over night lodging (\$70), mileage (\$.315 x 240 Round Trip = \$75.60), and one day's meals (\$42.45 for 3) plus misc. for printing, meeting room, etc. for each meeting (\$250). Total cost for 9 members = 9 X 188.05 each plus \$250 or \$1,942.45 each meeting. DED would anticipate the board would need the assistance of an attorney 1/4 time each year. DED would be required to provide support to the SBRFB. This would require one Business Information Specialist II.

DED assumes the support for the SBRFB would include computer equipment, office space and expense and equipment funding to cover expenses for the Board. DED assumes the fiscal impact of this proposal would be about \$75,000 per year.

Officials from the **Department of Economic Development - Division of Professional Registration (DPR)**, Budget and Legislation section state they currently process and prepare hundreds of rules annually (including rule fiscal notes) for all 37 boards and the division. It is assumed that the preparation of this additional information (small business impact statement) will require a significant additional amount of time for research and preparation. DPR assumes the need for an additional Budget Analyst II (at \$37,488) to assist DPR's Director of Budget and Legislation with the research and preparation that will be required to prepare a small business impact statement. DPR states the expenses resulting from this proposal (estimated to be roughly \$60,000 per year) will be billed back to the various board funds in accordance with the Division's Cost Allocation Plan.

Officials from the **Department of Economic Development - Division of Motor Carrier and Railroad Safety (MCRS)** states they currently have 90 different rules in force, of which virtually all would affect "small business". How much the activities required of MCRS by this bill would cost, or would reduce state revenues, could vary widely from one proposed rule, amendment or rescission to another proposed rule. Therefore, MCRS states they cannot quantify these potential costs with any reasonable certainty. However, because these activities would require highly detailed and extensive written responses, MCRS concludes that these tasks would require substantial staff time and efforts to comply.

ASSUMPTION (continued)

MCRS states that some of the tasks might be delegable to lower wage-earning personnel within the Division. However, the new statutory requirements would usually necessitate the review and oversight of such other personnel, as well as direct personal services, must be provided by both the Division's legal counsel and the program administrator (manager) for the relevant subject matter, i.e. motor carrier registration, motor carrier enforcement, railroad safety, etc.

In summary, MCRS states this bill will potentially have a fiscal impact through increased administrative and litigation activities. However, the extent of this impact is difficult to ascertain and is considered unknown.

Officials from the **Department of Social Services - Division of Medical Services (DMS)** states under this proposal, they may have to hold a public hearing on every proposed rule. DMS states they currently use Missouri Regulations as a notice for public hearings, which is held within 30 days. If Missouri Regulations are no longer used as the notice, DMS would have to use the newspaper for such notices. This would cost DMS several thousand dollars per hearing.

DMS also states the provision of the proposal regarding retroactive review of current existing rules would create additional expense for their agency. In all, DMS assumes this proposal would have a fiscal impact on their agency of an unknown amount, less than \$100,000 for advertising costs, holding additional hearings and staff costs for retroactive review.

Officials from the **Department of Natural Resources (DNR)** state that due to uncertainties with the number of instances in which a state rule may be appealed by a small business, DNR is unable to determine the fiscal impact of this legislation.

Officials from the **Attorney General's Office** and the **Department of Public Safety - Director's Office** each assume this proposal could have an unknown impact on their agency.

Officials from the **House of Representatives** assume there might be a slight increase in travel expenditures, but that this could be absorbed in the current budget.

Officials from the **Department of Conservation (MDC)** state this proposal could have fiscal impact on MDC funds because of the potential effect of MDC regulations on small business such as commercial fishermen, wildlife breeders, licensed shooting areas and permit vendors. The amount of fiscal impact is unknown.

ASSUMPTION (continued)

Officials from the **Office of Administration** state this proposal should not result in additional costs or savings to the Director of Budget and Planning. The proposal could affect an COA division that has rules or could have rules affecting small businesses (MBE/WBE, Purchasing, Facilities Management, and Design and Construction).

Officials from the **Office of Secretary of State (SOS)** assume there would be costs due to additional publishing duties related to the Small Business Regulatory Fairness Board's authority to promulgate rules, regulations, and forms. SOS estimates the division could require approximately 36 new pages of regulations in the Code of State Regulations at a cost of \$27.00 per page, and 54 new pages in the Missouri Register at a cost of \$23.00 per page. Costs due to this proposal are estimated to be \$2,214, however, the actual fiscal impact would be dependent upon the actual rule-making authority and may be more or less. Financial impact in subsequent fiscal years would depend entirely on the number, length, and frequency of the rules filed, amended, rescinded, or withdrawn. SOS does not anticipate the need for additional staff as a result of this proposal; however, the enactment of more than one similar proposal may, in the aggregate, necessitate additional staff.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Based on SOS' response to a similar proposal (SB 873) from 2000, SOS stated the proposal also requires agencies to file proposed rules and a small business impact statement with the small business regulatory review board. The impact statement is not currently filed with proposals of rulemaking submitted to the Secretary of State. If the impact statements must be published then the Secretary would publish 1,405 additional pages in the *Missouri Register* each year, assuming 1125 proposed rules with 1.25 page impact statements, at a cost of \$31,635 per year. It is assumed that the impact statements would not have to be published.

The proposal requires agency rules be reviewed by the new Board every other year. Rules could be amended or rescinded. If seven percent (7%) of rules would be changed during initial reviews, 350 *Code* pages would be published. Approximately 175 *Register* pages would be published. Costs for publication in future years would depend upon the number of rules changed due to reviews. Costs for the first two fiscal years are estimated at \$22,413.

ASSUMPTION (continued)

Officials from the **Department of Revenue, Department of Economic Development -**

Divisions of the Public Service Commission and General Council's Office, Department of Social Services - Divisions of Child Support Enforcement and Family Services, Department of Insurance, Missouri Gaming Commission, Department of Corrections, Office of Administration - Director's Office, Department of Elementary and Secondary Education, State Auditor's Office, Department of Agriculture, Office of the State Courts Administrator, Department of Labor and Industrial Relations, Department of Health and Senior Services, State Tax Commission, Office of the Lieutenant Governor, Missouri Ethics Commission, Missouri Consolidated Health Care Plan, Public School Retirement System of Missouri, Central Missouri State University, Linn State Tech, Truman State University, Department of Public Safety - Divisions of Missouri Highway Patrol, Missouri State Water Patrol, Missouri Veterans' Commission, Highway Safety, Liquor Control, Office of the Adjutant General, Missouri State Water Patrol and the State Emergency Management Agency each assume this proposal would not fiscally impact their respective agencies.

Oversight has listed an unknown cost to "various state agencies" for costs associated with holding public hearings on proposed rules and rule changes, review of the agency's rules to determine if they may impact small business, and other administrative issues that may arise as a result of this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
VARIOUS STATE FUNDS			
<u>Costs - Department of Economic Development (DED)</u>			
Personal Service (1 FTE)	(\$30,760)	(\$37,835)	(\$38,781)
Fringe Benefits	(\$10,489)	(\$12,902)	(\$13,224)
Expense and Equipment	<u>(\$27,878)</u>	<u>(\$23,556)</u>	<u>(\$24,263)</u>
<u>Total Costs - DED</u>	(\$69,127)	(\$74,293)	(\$76,268)
<u>Costs - Professional Registration</u>			
Personal Service (1 FTE)	(\$32,021)	(\$39,386)	(\$40,370)
Fringe Benefits	(\$11,531)	(\$14,183)	(\$14,537)
Expense and Equipment	<u>(\$8,630)</u>	<u>(\$412)</u>	<u>(\$424)</u>
<u>Total Costs - DED</u>	(\$52,182)	(\$53,981)	(\$55,331)

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
<u>Costs</u> - various state agencies that estimated an unknown fiscal impact for administrative costs including additional hearings, review of all rules, small business impact statements, appeals and biannual reports	(Unknown)	(Unknown)	(Unknown)
<u>Costs - Secretary of State</u> Publication of Rules	(\$22,413)	(\$22,413)	(Unknown)
ESTIMATED NET EFFECT TO VARIOUS STATE AGENCIES	(\$143,722 TO <u>UNKNOWN</u>)	(\$150,687 TO <u>UNKNOWN</u>)	(\$131,599 TO <u>UNKNOWN</u>)

<u>FISCAL IMPACT - Local Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small businesses would benefit from reductions in administrative rules governing their operations, less administrative sanctions, and more flexible enforcement of existing rules.

DESCRIPTION

This proposal states that, prior to submitting proposed rules for adoption, amendment, revision, or repeal, any state agency will determine whether the proposed rules affect small business. If they do, the agency must consider the practicality of less restrictive alternatives that could be implemented to achieve the same results as the proposed rule. If the proposed rules affect small business, the agency must consider creative, innovative, or flexible methods of compliance for small businesses and prepare a small business impact statement which will be submitted with the rules to the Small Business Regulatory Fairness Board prior to providing notice of a public hearing. The proposal outlines the requirements of the impact statement.

DESCRIPTION (continued)

These requirements will not apply to federally mandated regulations that afford the agency no discretion to consider less restrictive alternatives. For any proposed rules that affect small business, the agency will also submit a small business statement to the board after a public hearing is held. The proposal outlines the requirements of the statement.

The proposal establishes the Small Business Regulatory Fairness Board, which will be a Type I Agency within the Department of Economic Development. The proposal requires that the department provide staff for the board. The proposal outlines the board's responsibilities as well as the membership of the board.

The proposal allows any affected small business to file a written petition with the agency that has adopted rules, including rules adopted prior to the proposal's effective date. The proposal explains on

what grounds a rule can be objected to. Upon submission of a written petition, the agency must forward a copy of the petition to the board and to the Joint Committee on Administrative Rules. Within 60 days of the receipt of the petition, the agency will determine whether the impact statement or public hearing addressed the actual and significant impact on small business and will submit a written response of the agency's determination to the board. Any small business may appeal the agency's determination to the board. The proposal outlines the reasons on which the board may base its decision regarding a small business appeal of the agency's determination.

The proposal requires each agency to submit to the General Assembly and the board, by June 13 of each odd-numbered year, a list of all rules which affect small business, a report describing the

specific public purpose or interest for adopting each rule, and any other reasons that justify its continued existence. The General Assembly may take action in response to the report as it finds appropriate.

The proposal requires the board to provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns. Forty-five days after being notified by the board of these rules, the agency is required to submit a written report to the board in response to the complaints or concerns. The board may solicit testimony at public meetings regarding any report submitted by an agency. The proposal requires the board to submit an evaluation report to the Governor and the General Assembly regarding these issues.

The proposal outlines occasions when an agency will waive or reduce any administrative penalty or administrative fine for violation of any statute, ordinance, or rules by a small business.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the State Courts Administrator
Department of Economic Development
Department of Elementary and Secondary Education
Department of Mental Health
Department of Natural Resources
Department of Corrections
Gamming Commission
Department of Labor and Industrial Relations
Department of Revenue
Department of Social Services
Department of Public Safety
Missouri House of Representatives
Department of Insurance
Department of Conservation
Office of Administration
Lieutenant Governor's Office
State Auditors Office
Secretary of State's Office
Missouri Tax Commission
Central Missouri State University
Truman State University
Missouri Consolidated Health Care Plan
Linn State Tech.
Attorney General's Office
Department of Agriculture
Department of Health and Senior Services
Missouri Ethics Commission

NOT RESPONDING: Department of Transportation; Department of Mental Health



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